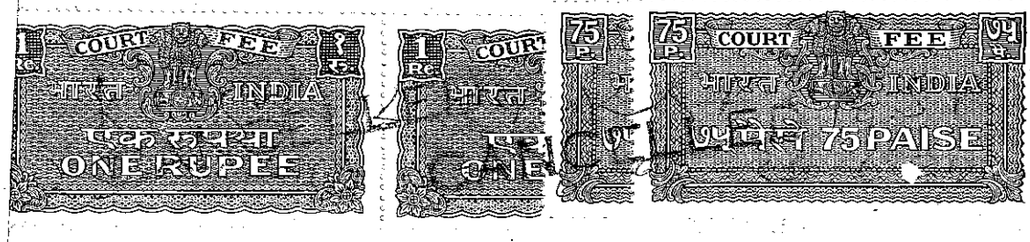


(4)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION NO. 2479 OF 1994

PETITIONER :- Sohan Singh S/o Indersingh
aged about 52 years Ex-Chargeman
Quarter No.2-B Sector No.6,
Bhilai District Durg, M.P.

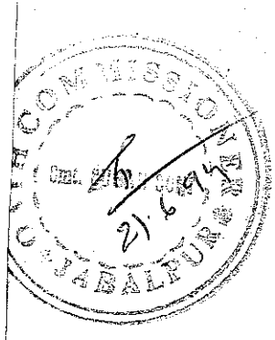
V E R S U S

RESPONDENTS :- 1. The Steel Authority of India Ltd.,
Bhilai Steel Plant, Bhilai,
Through the Managing Director,
Bhilai Steel Plant, Bhilai,
District Durg,(M.P).

2. The Superintendent, C.R.& R
Cokeoven & B.P.P. Bhilai Steel
Plant , Bhilai District
Durg,(M.P).

3. The Presiding Officer
Labour Court Durg,, Utai Road
Durg, District Durg,(M.P).

4. The Industrial Court of Madhya Pradesh
Through its Member (Bench at Raipur)
Krishna Sadan 16 H.I.G. Shanker Nagar
Raipur, District Raipur, M.P.



Petition UNDER ARTICLE ~~226~~ 227 OF CONSTITUTION OF INDIA

AFR

16.9.05

(126)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2472 of 1994

Sohan Singh

-Versus-

The Steel Authority of India Ltd. & others

Post for order on 16th September, 2005.

Sd/-
Satish K. Agnihotri
Judge

(127)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2472 of 1994

Sohan Singh

-Versus-

The Steel Authority of India Ltd. & others

Mr. H. B. Agrawal, Senior Advocate with Miss Sangeeta Mishra, Advocate for the petitioner.

Mr. P. Diwakar, Senior Advocate with Mr. Mahesh Sharma, Advocate for the Respondents No. 1 and 2.

O R D E R

(16th September 2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 7.3.1994 (Annexure P/25) passed by the Industrial Court, Bench at Raipur in Appeal No. 182/M.P.I.R. Act/93.

2. The relevant facts, for adjudication, are that the petitioner was appointed as Fitter, in the year 1959, in Coke Oven and By-product Department, Bhilai Steel Plant, Bhilai, District- Durg. The date of birth of the petitioner was recorded in the service record, on the basis of his declaration, as '10.1.1932'. In Exhibit D/10, which is Line of Promotion List (seniority list) for the post of Chargeman, mentioning Revised Pay Scale w.e.f. 1.9.1970, the petitioner is placed at Srl. No.6 and his date of birth mentioned in this document as '10.1.32'. Likewise in the Exhibit D/9, which is L.O.P. (Line of Promotion) Seniority of Capital Repair Group (Published vide No. S(M&R)/Estt/Sen/74/(CR)/1636 dated 27.2.74, the name of the

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petitioner is placed at Srl. No. 1 in the cadre of Chargeman and his date of birth is mentioned as '10/1/32' in this document, and thereafter it was continued to be recorded as 10.1.1932 on the basis of the service record. According to the petitioner in Exhibit P/1, which is Application Form for admission to the Provident Fund, for submission in the Office of the Chairman Board of Trustees, Provident Fund, Bhilai Steel Plant, filled in on 4.3.1983, his date of birth was mentioned as '13.1.1942' by the petitioner and it was accepted by the Assistant Manager (Personnel) of the Respondents No. 1 and 2. The Declaration and Nomination Form (Exhibit P/2) made on 5.3.1983 by the petitioner also indicated the date of birth of the petitioner as '13.1.1942'. The petitioner obtained a copy of the Birth Certificate in Punjabi language from the Chief Registrar (Births and Deaths) Punjab on 24.4.1989 wherein the date of birth of the petitioner was recorded as 23.1.1942. Subsequently, the petitioner obtained English version of the date of birth certificate from the office of the Municipal Corporation, Amritsar on 30.11.1992 wherein the date of birth of the petitioner was recorded as '18.1.1942'. It is evident from this document that the date of registration was '23rd January, 1942' and the Registration number was '678'.

3. The petitioner had received notice dated 8.9.1989 (Annexure P/10) whereby he was informed that on attaining the age of superannuation the petitioner would retire on 31.1.1990. Prior to this notice, the petitioner had been raising his grievance to the Respondents No. 1 and 2 by submitting representations i.e. on 20.3.1989 (Annexure P/5), on 10.5.1989 (Annexure P/2), on 24.7.1989 (Annexure P/4) for correcting his date of birth as '13.1.1942' instead of '10.1.1932'.

4. That being aggrieved by the non correction of his date of birth to 13.1.1942, the petitioner filed an application under Section 31(3) read

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with Sections 61 and 64-A of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter 'the Act, 1960') before the Labour Court, Durg praying for a relief that his date of birth be corrected as 13.1.1942 and the respondents be directed to retire him accordingly on the basis of his date of birth i.e. 13.1.1942. The Labour Court, Durg, drawing adverse inference from the facts that the original service book could not be produced and the management had not taken any action against the erring officials, and relying on the entry in the Provident Fund Form and Declaration Form, and further relying on the birth certificate, produced by the petitioner, wherein there was contradiction in the date of birth in the certificate issued in Punjabi language and in the certificate issued in English language, the Labour Court vide order dated 20.5.1993 passed in Case No. 172/M.P.I.R./89 declared the date of birth of the petitioner as 13.1.1942 and directed the respondents to retire the petitioner after completion of the age of 58 years on the basis of the date of birth of the petitioner as '13.1.1942'.

5. Feeling aggrieved by the order dated 20.5.1993 passed by the Labour Court, Durg, the respondents filed appeal under section 65 of the Act, 1960 before the Industrial Court, Raipur. The Industrial Court vide order dated 7.3.1994 passed in Appeal No. 182/M.P.I.R.Act/93, after having considered all the documents recorded the findings that the seniority list of February, 1974 clearly indicates the date of birth of the petitioner as 10.1.1932. Admittedly, recording of the date of birth in the seniority list was on the basis of the date of birth recorded at the time of appointment in the service book. It was found that no adverse inference can be drawn because the service book, attestation form and other documents prepared at the time of the appointment could not be produced being the old documents. The Industrial Court,

however, found that the subsequent documents like Provident Fund Form, Declaration & Nomination Form etc. made by the petitioner recording/mentioning his date of birth as 13.1.1942 cannot be relied upon for determining the date of birth. The birth and date certificate produced by the petitioner obtained in Punjabi language and English language have contradictory dates of birth. In Punjabi the date of birth was recorded as 23.1.1942 and the father's name was Dil Sher Singh, no place of birth was recorded in the said certificate. In the subsequent date of birth certificate, the date of birth of the petitioner is mentioned as 18th January, 1942 and father's name as Sher Singh. The Industrial Court did consider the said documents also. The Industrial Court after having considered and having appreciated all the documents and depositions of the witnesses of the parties, came to the conclusion that the petitioner's date of birth was 10.1.1932 and the petitioner was rightly retired from service on attaining the age of 58 years. The Industrial Court vide order dated 7.3.1994 after recording the above stated reasons allowed the appeal filed by the respondents and set aside the award dated 20.5.1993 passed by the Labour Court, Durg.

6. I have heard learned counsel for both the parties and perused the records of the Courts below. This Court has limited jurisdiction in exercise of its supervisory powers under Article 227 of the Constitution of India. The High Court can interfere only in cases of erroneous assumption or excess of jurisdiction, refusal to exercise jurisdiction, error of law apparent on the face of records, arbitrary or capricious exercise of powers of the authority or discrimination, flagrant error in procedure and recording of the perverse findings. In the present case I have not found that any of the ground stated above has been invoked to seek interference of this Court.

7. Shri H. B. Agarwal, learned Senior counsel with Miss Sangeeta Mishra, learned counsel appearing for the petitioner submitted that the Labour Court's order was perfectly legal and sustainable. The respondents were unable to prove their case in absence of service book and attestation forms that the petitioner's date of birth was 10.1.1932 and not 13.1.1942. The petitioner has not taken missing of the records as seriously by not taking any action against the erring officials. The Industrial Court had recorded the findings on the basis of the seniority list alone and completely ignored the provident fund form and nomination form filled in by the petitioner and accepted by the Management. The contradictions in both date of birth certificates in Punjabi and English are insignificant.

8. Mr. P. Diwakar learned Senior counsel with Mr. Mahesh Sharma, learned counsel appearing for the respondents on the contrary submitted that the Industrial Court has considered all the aspects of the matter and the same is valid and legal. Learned counsel for the respondents further submitted that this Court has limited jurisdiction under Article 227 of the Constitution of India. Learned counsel relied on the decision in Secretary & Commissioner, Home Department & others Vs. R. Kriubakaran, 1994 Supp (1) S.C.C.155 wherein the Supreme Court held as under:

> *"7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion,*

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may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible....."

9. In the case of Commissioner of Police, Bombay & another Vs. Bhagwan V. Lahane, (1997) 1 S.C.C. 247, relied by learned counsel for the respondents, the Supreme Court held that entry in the service book made on the basis of the date of birth is final unless it is proved by the employee that the said entry was made due to negligence on the part of some other person or that it was an obvious clerical error.

10. In the case of G.M. Bharat Coking Coal Ltd. West Bengal Vs. Shib Kumar Dushad & others (2000) 8 S.C.C. 696, relied on by learned counsel for the respondents the Supreme Court held as under:

"17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to

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pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialize, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior."

10. In the case of Hindustan Lever Ltd. Vs. S.M.Jadhav & another, (2001) 4 S.C.C. 52 the Supreme Court held that the employee cannot be allowed to raise a dispute with regard to the date of birth at the fag end of his career.

11. It is settled position of law that the employee should not be allowed to raise the dispute of the date of birth for correction at the fag end of his career. In Clause -5 of the Circular No. 87 dated 2nd August, 1974 issued by the Hindustan Steel Ltd. Bhilai Steel Plant it is clearly provided that no change in the date of birth should be allowed if such request is received during the preceding five years of service of the employee for any reason whatsoever.

12. The petitioner was retired from service on 31.1.1990 on attaining the age of superannuation i.e. on completion of 58 years of age in accordance with his date of birth recorded as 10.1.1932. The petitioner has raised a dispute at the fag end of his career knowing fully well that in all the seniority list published earlier in the years 1970, 1974 and thereafter, had indicated the date of birth of the petitioner as 10.1.1932. The documents produced subsequently cannot be taken into consideration. Some of the documents namely Provident Fund Form, Nomination Form were filed by the petitioner,

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and the certificates of birth and date produced by the petitioner in Punjabi as well as in English are contradictory, as such, I do not find any perversity in the findings recorded by the Industrial Court to call for interference of this Court under Article 227 of the Constitution of India.

13. From the decisions cited above, it is clear that unless a clear case is made out on the basis of the materials which are held to be conclusive in nature, the Court or Tribunal should not issue a direction for change of the date of birth.

For the reasons stated above, the petition is dismissed and the order dated 7.3.1994 passed by the Industrial Court is upheld. No order as to costs.

Sd/-
Sanjay K. Agrawal
Judge

Thakur